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B-164419-0.M.

MAY 20 1969

TO : Mr. Oye V. Stovall  
Director, International Division

FROM : Mr. Robert F. Keller  
General Counsel

SUBJECT: AID's request that GAO letter of June 13, 1968,  
denying relief to Richard Schenk for loss of funds  
in Vietnam, be rescinded. B-164419-0.M., June 7, 1968.

Your memorandum of December 3, 1968, transmitted a letter from AID dated November 15, 1968, which stated that the funds involved were not appropriated funds of the United States but were Vietnam Trust Funds; expressed the view that the GAO's jurisdiction under 31 U.S.C. 62a-1 is limited solely to appropriated funds of the United States; and requested that our Office rescind its letter of June 13, 1968.

Section IV of AID Manual Order 1512.3, effective December 10, 1963, and in effect at the time of the loss here involved, provides:

"IV. Ownership of Trust Funds

"Title to trust funds, together with any expendable supplies or property acquired with them resides with the cooperating country. In disbursing these funds for jointly agreed purposes, the Mission serves as trustee for the cooperating country and renders appropriate reports to the country as required. Balances on hand when the AID program in a country is terminated revert to the cooperating country."

Also, paragraphs 2 and 3 of the Trust Account Agreement between AID and the Government of Vietnam provide in pertinent part as follows:

"2. Funds advanced under this Agreement shall be held in trust for the Government of Cooperating Country. An accounting shall be rendered (annually or at such other intervals as agreed), to the Government of (Cooperating Country) of the uses made of all funds deposited under this Agreement. Any balance remaining in the trust account upon termination of this Agreement or of United States assistance programs in (Country) whichever is earlier, shall be returned to the Government of (Cooperating Country). \* \* \*

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"3. The AID will maintain records of all property purchased from the funds supplied by the Government of (Cooperating Country). These records may be inspected by representatives of the Government of (Cooperating Country). All property so purchased shall be identified as belonging to the Government of (Cooperating Country), and shall be transferred to the Government of (Cooperating Country) when no longer required for the support of United States assistance programs in the (Country)."

It is apparent from the above that the funds involved were the property of the Government of Vietnam and not appropriated funds of the United States. Nevertheless, we cannot concur with AID's view that the General Accounting Office therefore has no jurisdiction over such funds. It is clear from the quoted portion of the AID Manual Order and the Agreement that the United States Government must account to the Government of Vietnam for these funds. Mr. Schenk, as the officer of the United States Government who was officially placed in charge of these funds, must account to the United States Government for such funds. 5 Comp. Gen. 428, 6 id. 515, 7 id. 634, Woog v. United States, 48 Ct. Cl. 80. While such funds admittedly are not appropriated funds of the United States, they are clearly funds in which the United States has a sufficient interest by virtue of their being intrusted to, and accepted by, a public official in his official capacity as to render them "Government funds" within the meaning of 31 U.S.C. 82a-1. A-22805, November 30, 1929. We have in the past relieved accountable officers of the Government for losses from the trust fund "Personal Funds of Patients, VA," and restored the amount of the loss from appropriated funds, under the authority of 31 U.S.C. 82a-1. B-164896-O.M., August 1, 1968, B-95504-O.M., March 5, 1956. See also, B-47792, B-98557, June 7, 1955.

In support of the contention that 31 U.S.C. 82a-1 did not apply to the funds here involved, AID forwarded (in addition to the AID Manual Order and the Agreement cited above) a copy of a letter dated September 25, 1967, from your Division to AID in connection with the request for relief of Mr. Edward C. Ott, Executive Officer, Conakry, Guinea, wherein the statement is made that "Since the funds did not belong to the United States, the provisions of 31 U.S.C. 82a-1 providing for relief of accountable officers of liability for loss are not for application." This statement was taken from B-162448-O.M., September 15, 1967, in connection with the same request for relief. However, that case is readily distinguished from the present. The transaction there involved constituted a mere bailment for the benefit of the bailor under which the United States had only the limited liability of a bailee. The funds lost were funds belonging to a private contractor which had been

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placed with the officer for safekeeping, as a favor to the contractor. In the present case, the funds are funds of the Government of Vietnam held in trust by the United States Government for which the United States Government, under the general principles of trusteeship and under the pertinent regulations and agreement, is accountable to the Government of Vietnam. The distinction is evident.

However, in view of AID's informal representations to the effect that they desire to and will negotiate with the Government of Vietnam for the resolution of this shortage, but fear that your letter of June 13, 1968, precludes such action on their part, you may advise AID that said letter may be disregarded for purposes of such negotiation. See (in connection with such negotiation) B-153972-O.M., June 9, 1964.

Attachments

Reimbursement of stolen funds  
Agency for International Development  
Foreign Government's support costs of  
Trust Funds

Grants-in-aid, etc.  
Funds which lose identity as Federal  
Appropriations

Reimbursement from trust funds  
Relief  
DISBURSING OFFICERS

Trust funds  
Physical losses, etc., of funds, vouchers, etc.  
ACCOUNTABLE OFFICERS

